

## **REMARKS**

This application has been reviewed in light of the Final Office Action mailed on December 5, 2007. Claims 1-22 are pending in the application with Claims 1, 18 and 21 being in independent form. By the present amendment, Claims 1, 3, 10, 18 and 21 have been amended.

In the Final Office Action, Claims 1, 3-4, 9-14 and 20-22 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over amended Claims 1-2, 5-10 and 14-19 of copending U.S. Application Serial No. 10/399,664. It is respectfully submitted that the 10/399,664 application issued on January 15, 2008 as U.S. Patent No. 7,318,832 ('the '832 patent'). Notwithstanding, the independent claims of the present application have been amended to make them patentably distinct from the issued claims of the '832 patent. Therefore, it is respectfully requested that the present provisional rejection be withdrawn for at least these reasons.

Claim 1 was objected to for an informality. Claim 1 has been amended to change the term "whereby" to "wherein". Accordingly, withdrawal of the objection is respectfully requested.

Claims 1-22 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 5,873,873 issued to Smith et al. in view of U.S. Patent No. 6,984,220 issued to Wuchinich. Independent Claims 1, 18 and 21 have been amended in a manner which is believed to overcome the cited references, taken alone or in any proper combination.

Smith et al. is directed to an ultrasonic surgical clamp coagulator apparatus that is configured to effect cutting, coagulation, and clamping of tissue by cooperation of a clamping

mechanism of the apparatus with an associated ultrasonic end-effector at a distal end. The Smith et al. apparatus propagates longitudinal waves of ultrasonic energy to vibrate an acoustic assembly of the apparatus at a selected frequency. The end-effector at the distal end of the waveguide is placed in contact with tissue of the patient to transfer the ultrasonic energy to the tissue. A surgical tool is utilized to press the tissue against the end-effector to cause cutting and coagulating of the tissue. There is no teaching or suggestion that the apparatus disclosed by Smith et al. propagates or transmits torsional ultrasonic vibrations as set forth by the recitations of Applicants' independent Claims 1, 18 and 22.

The Examiner relies on Wuchinich in an attempt to cure the deficiencies of Smith et al. Wuchinich is directed to an ultrasonic tissue dissection system providing combined longitudinal and torsional motion of tips, together with irrigation and aspiration. The combined longitudinal and torsional motion is provided by a longitudinal-torsional resonator (L-T resonator). The L-T resonator converts the longitudinal vibration 23 into a longitudinal-torsional vibration 24 at tip 22 (Column 4, lines 65-66).

Neither Smith et al. nor Wuchinich disclose or suggest a first jaw member having an operating surface with a profile comprising an angled cutting element and a coagulating element and a second jaw member having a surface which has a complementary shape to that of the operating surface of the first jaw member, as recited by Applicants' independent Claims 1, 18 and 21. Accordingly, since there is no teaching or suggestion in the cited references of Applicants' newly added limitations in independent Claims 1, 18 and 21, independent Claims 1, 18 and 21 are patentable over Smith et al. and Wuchinich, taken alone or in any proper

combination. Hence, withdrawal of the rejection under 35 U.S.C. Section 103(a) with respect to independent Claims 1, 18 and 21 and allowance thereof are respectfully requested.

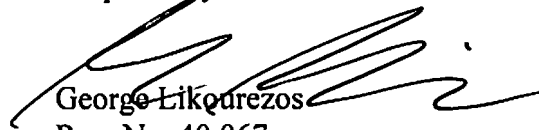
Dependent Claims 2-17, 19, 20 and 22 depend from either independent Claims 1, 18 and 21, and therefore contain the limitations of independent Claims 1, 18 and 21.

Therefore, for at least the same reasons given for independent Claims 1, 18 and 21, withdrawal of the rejection under 35 U.S.C. Section 103(a) with respect to dependent Claims 2-17, 19, 20 and 22 and allowance thereof are respectfully requested.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application and not previously withdrawn, namely, Claims 1-22, are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicants' undersigned attorney at (631) 501-5706.

Respectfully submitted,



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